

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3479-08
Bill No.: HCS for HB 1238
Subject: Abortion; Physicians; Medical Procedures and Personnel
Type: Original
Date: March 29, 2010

Bill Summary: This legislation changes the laws regarding the consent requirement for obtaining an abortion.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
General Revenue	(Could exceed \$755,119)	(Could exceed \$893,496)	(Could exceed \$917,301)
Total Estimated Net Effect on General Revenue Fund	(Could exceed \$755,119)	(Could exceed \$893,496)	(Could exceed \$917,301)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Total Estimated Net Effect on FTE	0	0	0

☐ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Sections 188.027, 188.052, 188.055, 188.070, 188.108, 334.245, 338.575, 565.310, 565.315 and 1:

Officials from the **Department of Insurance, Financial Institutions and Professional Registration, Department of Social Services, Missouri Senate, Office of the State Courts Administrator** and the **Office of Administration-Administrative Hearing Commission** each assume the proposal would have no fiscal impact on their respective agencies.

In response to a previous version of this proposal, officials from the **Office of Prosecution Services, University of Missouri** and the **Missouri House of Representatives** each assume the proposal would have no fiscal impact on their respective agencies.

In response to a similar proposal from this year (SB793), officials from the **Department of Public Safety** assume the proposal would have no fiscal impact on their agency.

Officials from the **Missouri State Highway Patrol (MHP)** state although the legislation does not clearly state what type of DNA testing would be performed on the tissue, it is presumed to be paternity testing. The Patrol does not have this capability in the Crime Lab. MHP refers these inquiries to a private lab specializing in paternity. Paternity testing is somewhat different from establishing identity through DNA and requires different expertise. Therefore, the Highway Patrol assumes no impact.

In response to a previous version of this proposal, officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

ASSUMPTION (continued)

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

In response to a previous version of this proposal, officials from the **Office of the State Public Defender (SPD)** state for purposes of the proposal, the SPD cannot assume existing staff will provide competent, effective representation for any new cases arising where indigent persons are charged with the proposed new crime of a non-physician providing services relating to pregnancy, including prenatal care, delivery and postpartum services or perform an abortion. This new crime would be a class B Felony. In addition, the legislation would make performing or assisting in performing an abortion on a coerced woman a new class C Felony.

While the number of new cases may be too few or uncertain to request additional funding for this specific proposal, the SPD will continue to request sufficient appropriations to provide competent and effective representation in all of the SPD cases.

Oversight assumes the SPD could absorb the additional caseload that may result from this proposal within existing resources. Oversight assumes any significant increase in the workload of the SPD would be reflected in future budget request.

Officials from the **Office of the Attorney General (AGO)** assumes that costs of implementation could be absorbed with existing resources, but if multiple cases result, AGO could request additional appropriation. In addition, due to the nature of the provision AGO assumes this proposal has the potential to be the subject of state and federal litigation. Therefore, potential costs are unknown.

Oversight assumes, because the potential for litigation is speculative, that the AGO will not incur significant costs related to this proposal. If a fiscal impact were to result, the AGO may request additional funding through the appropriations process.

Officials from the **Department of Corrections (DOC)** state the DOC, cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

ASSUMPTION (continued)

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in direct offender cost either through incarceration (FY09 average of \$16.04 per offender, per day, or an annual cost of \$5,855 per inmate) or through supervision provided by the Board of Probation and Parole (FY09 average of \$3.71 per offender, per day or an annual cost of \$1,354 per offender).

In summary, supervision by the DOC through probation or incarceration would result in additional unknown costs to the Department. Eighteen (18) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

Officials from the **Department of Health and Senior Services (DHSS)** state the following:

Section 188.027.1: DHSS is to provide printed materials or an informational video to the licensed physician performing the abortion describing the "probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from conception to full term....".

In calendar year 2008, there were 11,580 resident abortions performed in Missouri. Since the Department has no way of determining exactly how many abortions will be conducted at each facility each year, it is assumed extra materials will need to be produced and provided to each facility. The Department assumed pamphlets/brochures for at least two times the number of 2008 abortions ($11,580 \times 2 = 23,160$, rounded up to 23,200) will need to be printed or purchased and distributed. Pamphlets titled "Life Unto Life" are available through Childbirth Graphics for \$1.60 each. An estimated \$37,120 ($23,200 \times \1.60) would be needed to purchase 23,200 copies.

Section 188.027.1(3): Requires DHSS to provide the physician with printed materials or an informational video describing the various methods of abortion relevant to the stage of pregnancy, as well as any medical risks associated with each method. Subdivision (5) requires information be provided on the possibility of the procedure causing pain to a fetus of at least 22 weeks gestation. All of this information will be provided in one informational sheet listing the types of abortions as well as the side effects. This will result in a cost of \$2,320 ($23,200 \times \0.10).

Section 188.027.1(4): States, "The woman shall be provided with a geographically indexed list maintained by the Department of Health and Senior Services of health care providers, facilities, and clinics that perform ultrasounds, including those that offer ultrasounds free of charge." The Department does not currently maintain information regarding ultrasound providers and is

ASSUMPTION (continued)

unaware of any licensing requirements for them. Therefore it is questionable whether there is currently a way to gather this information comprehensively. The cost of collecting and providing this information is unknown.

Section 188.027.1 (6)(b): At least 24 hours prior to the procedure, the treating physician is required to explain the services available through the Missouri Alternatives to Abortion Program as well as any other programs and services available to pregnant women and mothers of newborn children that are offered by public and private agencies. This could potentially increase the number of referrals and the amount of services provided through the Alternatives to Abortion Program.

In 2008, there were 11,580 resident abortions performed in Missouri. The cost per client per year for the Alternatives to Abortion program in 2009 was \$725.98. Currently the program provides services only to women 200 percent of the federal poverty level or below. According to the 2008 American Community Survey conducted by the U.S. Census, 34 percent of Missouri women 15 years to 50 years or older are at 200 percent of the federal poverty level. Based on this assumption 3,937 ($11,580 \times 0.34$) women would be eligible for services provided through the Alternatives to Abortion program. Cost for services for an additional 3,937 women would be \$2,858,183 ($3,937 \times \725.98).

The Department is unable to project how many of the estimated women eligible for the program would actually seek services. This program is not considered an entitlement program and participation in the program is subject to available funding. Additional program participants may result in DHSS requesting additional funding for the program. Therefore, the estimated fiscal impact for this portion is estimated to range between \$0 and \$2,858,183.

Section 188.027.1(7): DHSS is required to provide printed materials or an informational video explaining the legal duties and obligations of the father of the unborn child. These brochures are available through the Department of Social Services at no cost for distribution.

Section 188.027.3: Requires the physician to provide the woman with a checklist form stating that she has been presented all the information required. This checklist is to be provided by DHSS. The cost for 23,200 pre-abortion checklists is \$580 ($23,200 \times \0.025 each).

Section 188.027.10: This section requires every abortion facility to display signs that contain a statement enforcing the idea that consent to an abortion is voluntary. DHSS shall promulgate rules specifying the location of the signs. The sign requirement must be considered as a condition of licensure of abortion facilities under Chapter 197. Promulgation and enforcement of

ASSUMPTION (continued)

the necessary rules would not result in a significant cost to the Department and will therefore be absorbed with existing resources. DHSS is required to provide the signs to each provider. The number of providers is unknown at this time. It is estimated that a minimum of 1,000 "coercion" posters will need to be printed and distributed at a cost of \$1,000 (1,000 posters x \$1.00 each). Shipping the posters to the providers would be approximately \$3,000 (1,000 posters x \$3.00 shipping).

Section 188.027.11: Requires the Department to make all of the information provided to the physicians available to the public through the DHSS website, as well as maintain a toll-free twenty-four hour hotline where a caller can obtain information on a regional level concerning the agencies and services described in subsection 1. Information is currently available on the DHSS website under "Alternatives to Abortion" and "Unplanned Pregnancies". The Department currently operates a toll-free 24 hour hotline that provides information on the agencies providing alternatives to abortion services regionally at a cost of \$875 per month for 25 calls and an additional \$4.00 per call for calls over 25. The Department estimates an additional 375 calls per year over the 25 maximum. The Department estimates the cost to be \$12,000 per year (12 months x \$875 = \$10,500 plus 375 calls x \$4.00 = \$1,500 for extra calls over 25 per month for a total of \$12,000).

The Department assumes that twelve months of funding will be needed for the cost of pamphlets, checklists, posters, and shipping; however, the estimated cost of services remains at ten months.

Section 188.052: This Section requires additional data elements to be added to the Report of Induced Termination of Pregnancy form. It is estimated that an ITSD programmer will be needed for 55 hours in order to modify the current database to allow entry of the additional items required by the proposed legislation. This will result in a cost of \$3,795 (\$69/hour x 55 hours). This will be a one-time cost in FY 2011.

Expenses to the Bureau of Vital Records for the revision of the form will be negligible. The form will be made available to providers on a secured website, so printing will not be necessary.

Expenses to the Bureau of Health Informatics to publish an annual report on post-abortion care based on complication reports can be absorbed with existing resources.

Oversight assumes 100% of eligibles would not participate in the program. DHSS assumed a range of \$0 and \$2,858,183 for the fiscal impact. For fiscal note purposes only, Oversight has assumed 1 out of every 4 women would participate. $\{ \$714,364 = \$725.98 \times 984 (3,937 \times 25\%) \}$

<u>FISCAL IMPACT - State Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
GENERAL REVENUE FUND			
<u>Costs - Department of Corrections</u>			
Incarceration/probation costs	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
<u>Costs - Department of Health and Senior Services</u>			
Fetal Development Charts	(\$37,120)	(\$38,234)	(\$39,381)
Type of Abortion Fact Sheet	(\$2,320)	(\$2,390)	(\$2,461)
Ultrasound Provider List	(Unknown)	(Unknown)	(Unknown)
Alternatives to Abortion Services	(Could exceed \$595,304)	(Could exceed \$735,795)	(Could exceed \$757,869)
Pre-Abortion Checklists	(\$580)	(\$597)	(\$615)
Coercion Posters	(\$1,000)	(\$1,030)	(\$1,061)
Shipping	(\$3,000)	(\$3,090)	(\$3,183)
ITSD Programming	(\$3,795)	\$0	\$0
24-Hour Hot Line	(\$12,000)	(\$12,360)	(\$12,731)
<u>Total Costs - DHSS</u>	<u>(Could exceed \$655,119)</u>	<u>(Could exceed \$793,496)</u>	<u>(Could exceed \$817,301)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Could exceed \$755,119)</u>	<u>(Could exceed \$893,496)</u>	<u>(Could exceed \$917,301)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

The proposed legislation may require increased regulation relating to facilities that provide abortions and physician who provide chemical abortions. This could lead to additional costs for these facilities.

FISCAL DESCRIPTION

Sections 188.027, 188.052, 188.055, 188.070, 188.108, 334.245, 338.575, 565.310, 565.315 and 1:

This legislation changes the laws regarding the consent requirements for obtaining an abortion. Abortions cannot be performed or induced without the voluntary and informed consent given freely and without coercion of the woman at least 24 hours prior to the abortion. The physician performing or inducing the abortion must provide orally and in writing:

- (1) The physician's name;
- (2) Medically accurate information including a description of the proposed abortion method, the medical risks, alternatives to the abortion, and follow-up care information;
- (3) The gestational age of the unborn child; and
- (4) The anatomical and physiological characteristics of the unborn child.

The physician performing or inducing the abortion or a qualified professional must:

- (1) Provide the pregnant woman with printed or video materials from the Department of Health and Senior Services that describe the anatomical and physiological characteristics of the unborn child's brain and heart functions, extremities and internal organs; various methods of abortion and the risks associated with each method; the possibility of causing pain to the unborn child; alternatives to abortion; and that the father of an unborn child is liable to provide child support, even if he has offered to pay for an abortion. The materials must be available from the Department by November 30, 2010, and must be legible, objective, unbiased, and scientifically accurate. All information provided to the pregnant woman must be given to her in a private room to ensure privacy, confidentiality, and no fear of coercion. If needed, an interpreter will be provided. All information must be provided at least 24 hours before payment for an abortion can be accepted;
- (2) Provide the woman with an opportunity to view an ultrasound and hear the heartbeat of the unborn child at a local health facility that offers these services free of charge at least 24 hours prior to the abortion;
- (3) Explain that coercing a pregnant woman to get an abortion is illegal and she is free to withhold or withdraw her consent to the abortion at any time without fear of losing treatment and assistance benefits; and

FISCAL DESCRIPTION (continued)

(4) Prominently display statements encouraging a pregnant woman seeking an abortion to contact agencies that help women carry an unborn child to full term and that no one can coerce a person to have an abortion.

The woman must certify in writing on a checklist form provided by the Department that she has received all of the required materials; had an opportunity to view an active ultrasound image of the unborn child and hear the heartbeat; and given her voluntary and informed consent, freely and without coercion, to the abortion procedure. No abortion will be performed or induced on an unborn child of 22 weeks gestational age or older unless the mother is given the opportunity to have a pain alleviating drug administered to the child. The physician must retain a copy of the form in the patient's medical record.

In the event of a medical emergency that results in an abortion, the physician must certify in writing the nature and circumstances of the emergency; and the certification must be kept in the abortion-performing facility's permanent file for seven years.

All abortion facilities must display a sign that notifies a pregnant woman that it is illegal to coerce a woman to have an abortion.

The Department must maintain a toll-free, confidential, 24-hour hotline telephone number for callers to obtain regional information about abortions, risks, and alternatives to abortions and make the information available on the Department's web site.

An employer cannot institute an occupational qualification that an employee or applicant seek or obtain an abortion.

Only licensed physicians can perform or induce an abortion. Anyone violating this provision will be guilty of a class B felony.

Any person who performs or induces an abortion and knows that the pregnant woman has been coerced will be guilty of a class C felony, except in the case of a medical emergency. If the abortion provider has cause to believe that a woman has been a victim of a coerced abortion and the victim is:

(1) Younger than 18 years of age, a report of suspected abuse must be made to the Department of Social Services;

FISCAL DESCRIPTION (continued)

(2) A person in the care or custody of the Department of Mental Health, a report of suspected abuse must be made to the Department;

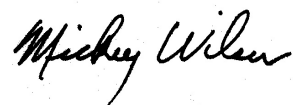
(3) A person 60 years of age or older who needs assistance to perform activities to meet his or her essential human needs, a report of suspected abuse must be made to the Department of Health and Senior Services; or

(4) An adult who has been abused or stalked by a present or former family or household member, the abortion provider must give the woman information about orders of protection.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Attorney General
Office of Administration-Administrative Hearing Commission
Department of Insurance, Financial Institutions and Professional Registration
Department of Corrections
Department of Health and Senior Services
Department of Social Services
Department of Public Safety
Office of the Secretary of State
Office of the State Public Defender
Missouri State Highway Patrol
Office of Prosecution Services
Missouri Senate
Office of the State Courts Administrator
Missouri House of Representatives
University of Missouri



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